

CHAPTER 45-03-12

INVESTMENT, CAPITAL, AND SURPLUS REQUIREMENTS

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45-03-12-01. Capital and surplus requirements. In the reasonable exercising of the commissioner's discretion, additional capital and surplus may be required based upon the type, volume, and nature of insurance business transacted.

History: Effective January 1, 1992.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-02-02, 26.1-06.1-01, 26.1-10-05

45-03-12-02. Investments. All companies doing business in the state shall have an investment portfolio which is diversified as to type and issue and which maintains liquidity.

History: Effective January 1, 1992.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-02-02, 26.1-05-19, 26.1-06.1-01, 26.1-10-06

45-03-12-03. Admitted assets. Repealed effective December 1, 2001.

45-03-12-04. Securities lending, repurchase, reverse repurchase, and dollar roll transactions. An insurer may enter into a securities lending, repurchase, reverse repurchase, and dollar roll transaction with business entities, subject to the following requirements:

1. The insurer's board of directors shall adopt a written plan for engaging in investment practices consistent with the requirements of the written plan in section 45-03-12-05 and which specifies guidelines and objectives to be followed, such as:
 - a. A description of how cash received will be invested or used for general corporation purposes of the insurer;
 - b. Operational procedures to manage interest rate risk, counterparty default risk, the conditions under which proceeds from reverse repurchase transactions may be used in the ordinary course of business, and the use of acceptable collateral in a manner that reflects the liquidity needs of the transaction; and

- c. The extent to which the insurer may engage in these transactions.

The board shall review and assess the insurer's technical investment and administrative capabilities and expertise before adopting a written plan concerning an investment practice.

- 2. For purposes of this section, acceptable collateral means:
 - a. As to securities lending transactions and for the purpose of calculating counterparty exposure amount, cash, cash equivalents, letters of credit, direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States or any agency of the United States, or by the federal national mortgage association or the federal home loan mortgage corporation;
 - b. As to repurchase transactions, cash, cash equivalents, and direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States or an agency of the United States, or by the federal national mortgage association or the federal home loan mortgage corporation; and
 - c. As to reverse repurchase transactions, cash and cash equivalents.
- 3. The insurer shall enter into a written agreement for all transactions authorized in this section other than dollar roll transactions. The written agreement shall require that each transaction terminate no more than one year from its inception or upon the earlier demand of the insurer. The agreement shall be with the business entity counterparty, but for securities lending transactions, the agreement may be with an agent acting on behalf of the insurer, if the agent is a primary dealer in United States government securities recognized by the federal reserve bank of New York and if the agreement:
 - a. Requires the agent to enter into separate agreements with each counterparty that are consistent with the requirements of this section; and
 - b. Prohibits securities lending transactions under the agreement with the agent or its affiliates.
- 4. Cash received in a transaction under this section shall be invested in accordance with North Dakota Century Code section 26.1-05-19 and in a manner that recognizes the liquidity needs of the transaction or used by the insurer for its general corporate purposes. For so long as the transaction remains outstanding, the insurer, its agent, or custodian shall maintain, as to acceptable collateral received in a transaction under this section, either physically or through the book entry systems

of the federal reserve, depository trust company, or other securities depositories approved by the commissioner:

- a. Possession of the acceptable collateral;
 - b. A perfected security interest in the acceptable collateral; or
 - c. In the case of a jurisdiction outside of the United States, title to, or rights of a secured creditor to, the acceptable collateral.
5. For purposes of calculations made to determine compliance with this subsection, no effect will be given to the insurer's future obligation to resell securities, in the case of a repurchase transaction, or to repurchase securities, in the case of a reverse repurchase transaction. An insurer shall not enter into a transaction under this section if, as a result of and after giving effect to the transaction:
- a. The aggregate amount of securities then loaned, sold to, or purchased from any one business entity counterparty under this section would exceed five percent of its admitted assets. In calculating the amount sold to or purchased from a business entity counterparty under repurchase or reverse repurchase transactions, effect may be given to netting provisions under a master written agreement; or
 - b. The aggregate amount of all securities then loaned, sold to, or purchased from all business entities under this section would exceed forty percent of its admitted assets.
6. In a dollar roll transaction, the insurer shall receive cash in an amount at least equal to the market value of the securities transferred by the insurer in the transaction as of the transaction date.
7. The amount of collateral required for securities lending, repurchase, and reverse repurchase transactions is the amount required pursuant to the provision of the national association of insurance commissioners accounting practices and procedures manual described in section 45-03-15-01.
8. Securities acquired by an insurer in a repurchase transaction shall not be sold in a reverse repurchase transaction, loaned in a securities lending transaction, or otherwise pledged.

History: Effective December 1, 2001; amended effective October 1, 2002.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-05-19

45-03-12-05. Authorization of investments by the board of directors.

An investment is deemed to be authorized by an insurer's board of directors prior

to its acquisition if the investment is acquired and held subject to the following requirements:

1. The board of directors shall adopt a written plan for acquiring and holding investments and for engaging in investment practices that specifies guidelines as to the quality, maturity, and diversification of investments and other specifications including investment strategies intended to assure that the investments and investment practices are appropriate for the business conducted by the insurer, its liquidity needs, and its capital and surplus. The board shall review and assess the insurer's technical investment and administrative capabilities and expertise before adopting a written plan concerning an investment strategy or investment practice.
2. For purposes of this section, investment strategy means the techniques and methods used by an insurer to meet its investment objectives, such as active bond portfolio management, passive bond portfolio management, interest rate anticipation, growth investing, and value investing.
3. Investments shall be acquired and held under the supervision and direction of the board of directors and the board shall evidence by formal resolution, at least annually, that it has determined whether all investments have been made in accordance with delegations, standards, limitations, and investment objectives prescribed by the board or a committee of the board charged with the responsibility to direct its investments.
4. On no less than a quarterly basis, the board of directors or committee of the board of directors shall:
 - a. Receive and review a summary report on the insurer's investment portfolio, its investment activities, and investment practices engaged in under delegated authority, in order to determine whether the investment activity of the insurer is consistent with its written plan; and
 - b. Review and revise, as appropriate, the written plan.
5. In discharging its duties under this section, the board of directors shall require that records of any authorizations or approvals, other documentation as the board may require, and reports of any action taken under authority delegated under the written plan be made available on a regular basis to the board of directors.

History: Effective December 1, 2001.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-05-18